UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 April 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16,26-34,52-65 and 198* is/are pending in the application.

　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16, 26-34, 52-65 and 198* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　a)☐ All　b)☐ Some *　c)☐ None of:

　　1.☐ Certified copies of the priority documents have been received.

　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

1.   Claims 1-16, 26-34, 52-65 and 198 have been examined. Application 09/834,500

(SYSTEM AND METHOD FOR TARGETING OBJECT ORIENTED AUDIO AND VIDEO

CONTENT TO USERS) has a filing date 04/12/2001.

Response to Amendment

2.   In response to Final Rejection filed 07/17/2007, the Applicant filed an RCE, which

amended claims 1-3, 6, 9-12, 16, 26-28, 32-34, 52-61, 63-65, 198 and cancel claims 17-

25, 66-78, 195-197 and 199-200.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

Claims 52 is rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.   Based on Supreme Court precedent, a

method/process claim must (1) be tied to another statutory class of invention (such as a

particular apparatus) (see at least Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker

v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972);

Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject

matter (such as an article or materials) to a different state or thing (see at least

Gottschalk v. Benson, 409 U.S. 63, 71 (1972)). A method/process claim that fails to

meet one of the above requirements is not in compliance with the statutory

requirements of 35 U.S.C. 101 for patent eligible subject matter. Here the claims fails to

meet the above requirements because the steps are neither tied to another statutory

class of invention (such as a particular apparatus).

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-16, 26-34, 52-57, 61-65 and 198 are rejected under 35 U.S.C. 102(e)

as being anticipated by Flickinger (US 2005/0210502).

As per claims 1 and 52, Flickering teaches:

A system for transmitting a program containing content including a plurality of

media objects, wherein a portion of the plurality of media objects is targeted to at least

two user audiences, comprising:

a source of the plurality of media objects, the plurality of media objects including

a plurality of background media objects (i.e. "portions of a screen during actual

programming" paragraph 41) and a plurality of targeted media objects (see paragraph

41 "ads"); and

a transmitting system in communication with the source of the plurality of media

objects, the transmitting system configured to transmit a programming signal that

comprises, a portion of the plurality of background media objects to be presented at an

instance in the program to the at least two user audiences, and a portion of the plurality of targeted media objects to be presented at the instance in the program, the portion of the plurality of targeted media objects including a first media object to be targeted to a first user audience and a second media object to be targeted to a second user audience (see paragraphs 41, 42, 64). Flickering teaches selecting ads to insert into a portion of a screen (i.e. background images) during an actual programming, where said ads are targeted (i.e. "targeted media objects") based upon user's profile and where different ads may be maintained for each potential subscriber at the subscriber location (i.e. "mother, father, child"; see paragraph 64; "the father would be targeted with a different ad than the child or the mother").

As per claims 2, 29, 62, Flickering teaches:

wherein the *at least two user audiences are based on a plurality of user profiles, each* user profile is based upon information selected from the group consisting of: response by a user to a survey, demographic information, user viewing habits, selection of a media object by a user during a programming signal, purchase behavior, a compilation of viewing habits from at least two users, statistical information, and regional information (see paragraphs 55, 64).

As per claim 3, Flickering teaches:

wherein the user profile is generated by a user profiling system located with the transmitting system (see paragraph 58).

As per claims 4, 30, 53, Flickering teaches:

wherein the programming signal further comprises a signal in a form selected from the group consisting of: a video signal, an audio signal, a combined audio and video signal, animation, text, graphics, multimedia, slow frame video, video stills, sequence of individual frames, virtual reality, live, pre-recorded, natural, synthetic, combined natural and synthetic, and computer generated content (see paragraph 30).

As per claim 5, Flickering teaches:

wherein the programming signal is transmitted by the transmitting system to a receiving system via a transmission medium selected from the group consisting of: broadcast, microwave, millimeter wave, wireless, wireline, satellite, cable, and fiber optics (see paragraphs 29-30).

As per claims 6, 31 and 55, Flickering teaches:

wherein the *plurality of media objects* is received by an input port *in communication with the transmitting system* over a transmission medium selected from the group consisting of: broadcast, wireless, wireline, microwave, millimeter wave, satellite, cable, and fiber optics (see paragraphs 29-30).

As per claim 7, Flickering teaches:

wherein the transmitting system further comprises a wireless system selected from the group consisting of: television broadcasting system, radio broadcasting system, microwave systems, millimeter wave systems, infrared systems, wireless telecommunications system, and a satellite broadcasting system (see paragraphs 28-31).

As per claim 8, Flickering teaches:

wherein the transmitting system further comprises a wired system utilizing a communications medium selected from the group consisting of: cable, coaxial cable, twisted pair cable, fiber-optic cable, telephone cable, and closed circuit cable (see paragraph 31).

As per claims 9, 32, 65, Flickering teaches:

wherein an input port *in communication with the transmitting system* receives the *plurality of media objects* via a stand-alone system from a data storage medium selected from the group consisting of: compact disc, digital versatile disc, video tape, gaming cartridge, memory stick, magnetic storage medium, optical storage medium, Flash memory, random access memory, and read only memory (see paragraph 34).

As per claim 10, Flickering teaches:

wherein the transmitting system transmits the programming signal via at least one network selected from the group consisting of: the Internet, intranet, private network, wired network, ATM network, wireless network, wide area network, local area network, and a public network (see paragraph 34).

As per claim 11, Flickering teaches:

wherein the programming signal is streamed over the network (see paragraph 34).

As per claims 12, 27, 54, Flickering teaches:

wherein the *plurality of* media objects is transmitted in a format selected from the group consisting of: MPEG-1, MPEG-2, MPEG-4, MPEG-7, JPEG, motion JPEG, GIFs, Quicklime, ActiveMovie, DVI, and Indeo (see paragraph 34).

As per claim 13, <u>Flickering</u> teaches:

wherein the transmitting system utilizes a transmission protocol selected from the group consisting of: RTP, UDP, TCP/IP, and ATM to transmit the programming signal (see paragraph 34).

As per claims 14, 33, 56 and 76, <u>Flickering</u> teaches:

wherein the programming signal includes at least one media object containing content related to at least one program type selected from the group consisting of: news program, sports program, virtual reality program, entertainment program, music video, game show program, motion picture program, video program, live program, audio program, polling question, educational program, non-commercial program, and a pre-recorded program (see paragraph 41).

As per claims 15, 34, 57, <u>Flickering</u> teaches:

wherein the programming signal includes at least one media object containing advertising related content (see paragraph 41).

As per claim 16, <u>Flickering</u> teaches:

wherein the transmitting system receives the first media object and the second media object from an input port *in communication with the transmitting system*, combines the first media object and the second media object into a composite programming signal and transmits the composite programming signal, whereupon receiving the composite programming signal a receiving system selects one of the first media object and the second media object based upon a user profile (see paragraph 41).

As per claim 26, <u>Flickering</u> teaches:

A system for transmitting a program containing content including a plurality of media objects, wherein a portion of the plurality of media objects is targeted to at least two user audiences, comprising:

a source of the plurality of media objects, the plurality of media objects including a plurality of background media objects (i.e. "portions of a screen during actual programming" paragraph 41) and a plurality of targeted media objects (see paragraph 41 "ads");

a transmitting system in communication with the source of the plurality of media objects, the transmitting system configured to transmit a programming signal that comprises, a portion of the plurality of background media objects to be presented at an instance in the program to the at least two user audiences (see paragraph 41-42), and

a portion of the plurality of targeted media objects to be presented at the instance in the program, the portion of the plurality of targeted media objects including a first media object to be targeted to a first user audience and a second media object to be targeted to a second user audience (see paragraphs 41-42); and

a receiving system in communication with the transmitting system, the receiving system configured to:

receive the programming signal (see paragraph 41);

select at least one of the first media object targeted to the first user audience or the second media object targeted to the second user audience from the programming signal based on a user profile (see paragraph 64); and

output the portion of the plurality of background media objects and the at least one of the first media object or the second media object to a presentation system (see paragraph 41). <u>Flickering</u> teaches selecting ads to insert into a portion of a screen (i.e. background images) during an actual programming, where said ads are targeted (i.e. "targeted media objects") based upon user's profile and where different ads may be maintained for each potential subscriber at the subscriber location (i.e. "mother, father, child"; see paragraph 64; "the father would be targeted with a different ad than the child or the mother").

As per claim 28, <u>Flickering</u> teaches:

wherein the first media object and the second media object both contain content targeted to a first user profile (see paragraph 64).

As per claim 61, <u>Flickering</u> teaches:

wherein the identifying *of at least one of the first user profile or the second user profile* further comprises:

obtaining user information; and compiling the user information into *the at least one of the first user profile or the second user profile* (see paragraph 64).

As per claim 63, <u>Flickering</u> teaches:

wherein the identifying *of the at least one of the first user profile or the second user profile* is accomplished by a receiving system (see paragraph 64).

As per claim 64, <u>Flickering</u> teaches:

wherein the method further comprises storing the *plurality of* media objects in a data storage device and retrieving the *plurality of* media objects from the data storage

device at a designated time for transmitting the *plurality of* media objects in the programming signal (see paragraph 66)

As per claim 198, <u>Flickering</u> teaches:

wherein whereupon receipt of the programming signal, the portion of the plurality of background media objects and the at least one of the first media object or the second media object being presented to a user audience associated with the at least one of the first user profile or the second user profile (see paragraph 64).

5.   Claims 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over <u>Flickering</u> (US 2005/0210502) in view of <u>Olivier</u> (U.S. 6,480,885).

As per claims 58-60, <u>Flickering</u> fails to teach:

establishing a chat interface between a user and a system transmitting the *programming signal,* wherein the chat interface utilizes at least one media object *from the plurality of media objects* to facilitate communications. However, <u>Olivier</u> teaches a system that allows users to be targeted with customized messages via e-mail, chat or instant messaging based upon the users' profiles (see column 3, lines 5-32). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that <u>Flickering</u> would use the <u>Olivieri</u> system to target messages to users based upon the users' profiles. This feature would allow users of the <u>Picco</u> system to select the messages that the users would like to receive.

Response to Arguments

6.   Applicant's arguments filed 04/09/2008 have been fully considered but they are not persuasive. The Applicant argues that <u>Flickering</u> does not teach "background media

objects to be presented at an instance in the program" and "target media objects to be presented at the same instance in the program". The Examiner answers that <u>Flickering</u> teaches selecting ads to insert into a portion of a screen (i.e. background images) during an actual programming, where said ads are targeted (i.e. "targeted media objects") based upon user's profile and where different ads may be maintained for each potential subscriber at the subscriber location (i.e. "mother, father, child"; see paragraph 64; "the father would be targeted with a different ad than the child or the mother"). Therefore, contrary to Applicant's argument, <u>Flickering</u> teaches presenting background images (i.e. "screen") at the same instance during the actual programming that targeted media objects (i.e. ads) are presented at a portion of a screen.

Conclusion

7.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/
Art Unit 3688
July 5, 2008